IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3973 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

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MOHANBHAI S BAHTIA

Versus

THE ORIENTAL INSURANCE CO LTD

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Appearance:

1. Special Civil Application No. 3973 of 1991

MR TR MISHRA for Petitioner No. 1

MS MINI NAIR for MR MJ THAKORE for Respondent No. 1

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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 11/12/2002

ORAL JUDGEMENT

1. This petition under Articles 14, 16 and 226 of the Constitution is preferred with a prayer to direct the

respondent to confirm the petitioner in his services as a Development Officer. There is no dispute about the fact that the petitioner was appointed by the respondent Insurance Company by the order dated 14.2.1989, which is at Annexure-A to the petition and which contains express condition No.5 as under:

"a) Confirmation in the services shall not be automatic, on fulfilment of the above conditions, unless a letter of confirmation is specifically issued by the Company,

b) Unless letter of confirmation or extension of probation is issued to you, your services shall stand automatically terminated after expiry of the period of probation."

Admittedly, the appointment was on probation and the period of probation had expired, whereafter, the petitioner continued to work, according to the petition.

2. Learned counsel Ms.Mini Nair, appearing for Mr.Mihir J. Thakore, advocate for the respondent, pointed out from the affidavit-in-reply that the petitioner was paid the salary of March, 1991 and asked not to come with effect from 1.4.1991. It was also pointed out from the said affidavit that the petitioner procured in the first year of his probation insurance premium of Rs.75,865/- against the minimum premium requirement of Rs.2.5 lakhs while, in the second year, the petitioner was able to procure total insurance premium of Rs.1,23,485/- as against the minimum requirement of Rs.3 lakhs. In view of this dismal performance and following the general guidelines evolved for confirmation of probationary Development Officers, the petitioner was not confirmed in service and, according to the express condition of appointment on probation, no further action was required to be taken against the petitioner. The contention that the petitioner was working during the period from April, 1991 to May, 1991 and even paid wages for the same, is not admitted. It, however, appears from the record that the petitioner had approached this Court in June, 1991 and, on 21.6.1991 while issuing Rule, status quo as obtaining on that day was ordered to be continued. Learned counsel Mr.Mishra for the petitioner also pointed out that under separate Civil Application No.759 of 1993, this Court (Coram: R.K.Abichandani, J.) had, by order dated 15.7.1993, ordered the respondent to pay to the

petitioner wages as per the rules for the work that might have been done by him.

3. The above set of facts do not confer any right upon the petitioner of reinstatement or for continuation in the employment of the respondent. The learned counsel for the petitioner was at a loss to explain as to how the petitioner had any legal right to continue in employment under any provision of law or service rules of the respondent Company. It was faintly contended that the alleged termination in June or July, 1991 was in violation of the provisions of the Industrial Disputes Act insofar as the retrenchment compensation was admittedly not paid to the petitioner. This contention was based on the premise that the service of the petitioner had continued from February, 1989 to June, 1991 disregarding the express condition of appointment under which the service of the petitioner stood automatically terminated without the necessity of any written order or any action on the part of the respondent. Therefore, there is no substance in the submissions of the petitioner and accordingly the petition is required to be rejected. Accordingly, the petition is dismissed and Rule is discharged with no order as to costs.

Sd/-

( D.H.Waghela, J.)

(KMG Thilake)

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